THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26394 of 2006

26.12.2006

Between:

S.T.Maqbool, S/o.Late S.T.Ismail

... Petitioner

AND

The Chief Executive Officer, A.P.State Wakf Board,
Haj House, Nampally, Hydeabad

And another

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26394 of 2006

ORDER:

This writ petition is filed challenging the order of the first respondent dated 25.9.2006 whereunder the petitioner was directed to vacate the land admeasuring Acs.0.03 in survey No.275 situated at Dhone village and Mandal in Kurnool District (hereafter called, the subject land) and deliver vacant possession to Inspector/Auditor, Wakfs, Kurnool District, within 15 days from the date of receipt of the said proceedings.

The case of the petitioner in brief is as follows. Petitioner's father, Ismail, purchased subject land under a registered sale deed bearing document No.721/82 and after obtaining permission from Dhone Gram Panchayat vide permit B.A.No.30/88-89, dated 02.8.1988, he constructed a house. After death of the father, petitioner succeeded to the property and was in possession of the same. The first respondent issued notice dated 03.6.2006 to the petitioner, which was served on him on 12.7.2006, directing him to show cause as to why an order, to remove the encroachment, under Section 54(3) of the Wakf Act, 1995 (the Act, for brevity) should not be passed. The petitioner was asked to submit explanation within 15 days from the date of receipt of the notice. He submitted explanation through his Advocate denying the contention that the property under his possession is wakf property. The first respondent however passed impugned order observing that the petitioner failed to submit explanation within the stipulated time.

At the stage of admission itself, the first respondent has filed counter affidavit. The writ petition is opposed as not maintainable in view of availability of alternative remedy before the State Wakf Tribunal. The title of the petitioner to the subject land is denied. It is further stated that the land in survey No.275 is the wakf belonging to Dhone Ashoorkhana and the same was published in Gazette Notification No.Part.II, dated 02.5.1963 at serial No.1959. The petitioner and others encroached upon the wakf property and, therefore, action was initiated under Section 54 of the Act. The petitioner has not submitted explanation though the show cause notice under Section 54(1) of the Act is served on 12.7.2006. All other allegations in the writ affidavit are denied.

Heard learned Counsel for the petitioner and learned Standing Counsel for A.P. State Wakf Board, who maintained their position as in the pleadings. As there is a dispute regarding the submission of reply/ explanation by the petitioner, this Court directed the learned Standing Counsel to produce the file. Accordingly File No.M7/15/Prot/KNL/2003-Z.IV dealing with unauthorized occupation of wakf property in Dhone village, has been produced before this Court. A perusal of the Note File would show the following. After receiving the show cause notices, six encroachers submitted explanations through their Advocates. The office of the first respondent Board put up a note (pp.15-16-NF) for necessary orders as to conducting summary enquiry under Section 54(3) of the Act. The Special Officer passed orders to that effect. An Enquiry Officer was appointed by order dated 20.9.2006. Then the file was sent to the Enquiry Officer, who started separate Note File. On 01.12.2006, the Enquiry Officer directed to issue notice to K.Rathangapani Reddy, learned Counsel for the petitioner, to attend enquiry on 16.12.2006 at 11.00 am. It is observed from the note file that as Executive Officer was deputed with effect from 10.11.2006 to 25.11.2006, fresh notice may be necessary. The note file in the main file or the separate note file maintained by Special Officer/Chief Officer does not contain minutes of first respondent to pass orders on 25.9.2006. An inference can therefore be drawn that even before the enquiry is completed, the impugned order came to be passed in total ignorance of the earlier proceedings. The fact that notice was directed to be ordered to learned Counsel for the petitioner itself would show that though it is not found, explanation submitted by the petitioner was received by the first respondent.

Indeed, it is also evidenced by Xerox copy of the acknowledgement dated 02.8.2006. The impugned order, therefore, is passed in gross violation of principles of natural justice, without application of mind. Therefore, impugned order is liable to be set aside.

In the result, the writ petition is allowed. The impugned order is set aside and the matter is remanded to the first respondent to give liberty to the petitioner to participate in the summary enquiry under Section 54(3) and pass appropriate orders. After perusing the file, this Court is of considered opinion that this is a case where the first respondent should be mulcted with exemplary costs quantified at Rs.2,000/- (Rupees Two thousand only). There shall be order to that effect.

The writ petition is accordingly allowed with costs.

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December 26, 2006. (**V.V.S.RAO,J**)

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